IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.8.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.28616 of 2007
&
M.P.No.1 of 2007

M/s. Premmier Milk Dairy,
Rep. by its Partner,
A.Muthukumar .. Petitioner

vs.

The Deputy Commercial Tax Officer,
Gobichettipalayam. .. Respondent

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the respondent in TNGST No.2962391/2005-2006, dated 4.7.2007 quash the same.

For petitioner : M/s. R.Hemalatha
For respondent : Mr.R.Mahadevan
Additional Government Pleader

O R D E R

Mr.R.Mahadevan, the learned Additional Government Pleader, takes notice for the respondent.

2. With the consent of the learned counsels appearing on either side, the writ petition is taken up for final disposal.

3. The writ petitioner challenges the notice issued by the respondent in TNGST:2962391/2005.06, dated 4.7.2007, which is as follows:

"TNGST:2962391/2005.06. Office of the Deputy Commercial
Tax Officer, Gobichettipalayam.

Dated: 4.7.2007.

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NOTICE

Tvl. Premier Milk Dairy, Bharathi Nagar, Kalingiam was a registered dealers in the books of the Deputy Commercial Tax Officer Gobichettipalayam. They were a manufacture of dairy products. They have obtained Form XVII from this office and purchased machinery against Form XVII for use in manufacture of dairy products under Section 3(5) of the TNGST Act 1959. The purchases of machinery against Form XVII are as follows:

| Sl.No. | Bill No. and date. | Purchase value. |
|---|---|---|
| 1) | 104/24.9.03. | Rs.1,25,500.00 |
| 2) | Nil/16.12.03. | Rs. 10,600.00 |
| 3) | 535/2.12.03. | Rs.1,10,985.00 |
| 4) | 7425/3.1.04. | Rs.2,06,604.00 |
| 5) | 241/19.11.03. | Rs.4,80,000.00 |
| 6) | 7/8.10.03. | Rs.1,22,500.00 |
| 7) | 120/26.9.03. | Rs. 14,000.00 |
| 8) | 389/21.1.04. | Rs. 12,000.00 |
| | Total purchase | Rs.10,82,189.00 |

The dealers have availed the concession available under Section 3(5) of the TNGST Act 1959.

2) As per Section 3(5), the dealers who after purchasing the goods in respect of which he had furnished any declarations fails to install the goods, any make use of the goods so purchased for the purpose specified in the declaration on disposal of such goods in any other manner within a period of five years shall pay the difference of tax payable on the turnover relating to such goods at the rate prescribed and three percent. The dealers failed to install the goods and make use of the goods so purchase for the purchase specified in the declaration and sold the machineries on 29.10.06 i.e. within a period of five years. The dealers have not paid the difference of tax for the purchase to the extent of Rs.10,82,189.00 as per Section 3(5) of the Act.

3) It is therefore proposed to levy tax at 9.41/2 % (12-3=9 +SC.) on Rs.10,82,189.00 under Section 3(5) of the TNGST Act 1959. It is also proposed to levy a penalty of Rs.1,02,267.00 being 150% of the balance of tax under Section 12(3) (b) of the TNGST Act 1959.

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4) The dealers may file their objections, if any against the proposal in writing with connected records at 11.00 A.M. on or before 25.7.02 at my office at Gobichettipalayam, failing which orders will be passed as proposed in the notice.

Deputy Commercial Tax Officer,
Gobichettipalayam.

To
Thiru.A.Muthukumar S/o. P.Arthanari,
12/54-D, Jalathal,
Murali Po,
Bhavani Tk. Erode District."

4. The main ground raised by the petitioner is that the notice has been issued by the respondent without jurisdiction and without considering the materials on record.

5. Mr.R.Mahadevan, learned Additional Government Pleader appearing on behalf of the respondent, has submitted that it is open to the petitioner to raise the necessary objections and also to file all the connected records in support of the petitioner's contention based on which the respondent may pass appropriate orders.

6. On the submissions made by the learned counsel for the petitioner as well as the respondent, this Court is of the considered view that the petitioner has not made out sufficient grounds to set aside the impugned notice, issued by the respondent, on 4.7.2007. However, it is made clear that it is open to the petitioner to submit its objections, if any, against the notice issued by the respondent, dated 4.7.2007, along with the connected records, within a period of four weeks from the date of receipt of a copy of this order.

7. On the petitioner submitting the objections, the respondent is to pass appropriate orders, considering the grounds raised therein, on merits and in accordance with law, within a period of four weeks thereafter.

8. With the above directions, the writ petition is disposed of. No costs. Consequently, connected M.P. is closed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

akv

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To

The Deputy Commercial Tax Officer,
Gobichettipalayam.

1 cc To The Special Government Pleader (Taxes), SR.54225.
1 cc To M/s.R.Hemalatha, Advocate, SR.54116.

Writ Petition No.28616 of 2007

VRK(CO)
RVL 21.09.2007

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